

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Withdrawal of Critical Habitat Proposals for the Key Largo Woodrat and the Key Largo Cotton Mouse

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of Withdrawal of Proposed Rule.

SUMMARY: The Service gives notice of its withdrawal of proposed critical habitat for the Key Largo woodrat (*Neotoma floridana smalli*) and the Key Largo cotton mouse (*Peromyscus gossypinus allapaticola*). Both species are native to Key Largo, Monroe County, Florida, and were proposed as endangered species, with critical habitat, on February 9, 1984, and were listed as endangered on August 31, 1984. Designation of critical habitat was deferred to expedite the listing process. Public land acquisition and preliminary land planning efforts involved in an ongoing Habitat Conservation Plan, pursuant to Section 10(a) of the Endangered Species Act, as amended, indicate that it is not prudent to designate critical habitat for the Key Largo woodrat and Key Largo cotton mouse at this time.

FOR FURTHER INFORMATION CONTACT: Mr. David J. Wesley, Endangered Species Field Office, U.S. Fish and Wildlife Service, 2747 Art Museum Drive, Jacksonville, Florida 32207 (904/791-2580 or FTS 946-2580).

SUPPLEMENTARY INFORMATION:**Background**

The Key Largo woodrat (*Neotoma floridana smalli*) and the Key Largo cotton mouse (*Peromyscus gossypinus allapaticola*) are small mammals native to the tropical hardwood forests of Key Largo, Monroe County, Florida. The range of both species on Key Largo has been reduced by commercial and residential development, and future development, if unplanned, could continue to destroy habitat of these species.

In the *Federal Register* of September 21, 1983 (48 FR 43040), the Service issued an emergency rule determining endangered status for the Key Largo woodrat and cotton mouse, pursuant to the Endangered Species Act of 1973, as amended. The emergency designation

expired on May 18, 1984. On February 9, 1984 (49 FR 4951), the Service proposed endangered status and critical habitat for both species under the usual procedures of the Act. A public hearing on the proposal was held April 24, 1984, in Tavernier, Monroe County, Florida. On August 31, 1984 (49 FR 34504), the Service published a final rule determining endangered status for the Key Largo woodrat and cotton mouse. The critical habitat designation was deleted from the final rule to expedite the listing process, as provided for by section 4(b)(6)(C) of the Act, as amended in 1982. Section 4(b)(6)(C) requires, however, that critical habitat be designated within 2 years of its proposal, if not designated concurrently with the final regulation listing the species.

The comment period for critical habitat designation was reopened on November 21, 1984 (49 FR 45887), and August 30, 1985 (50 FR 35271). The extensions of the comment period were to allow for receiving additional information which would affect critical habitat designation. The primary source of such information was anticipated to be the Habitat Conservation Plan (HCP), being developed for North Key Largo pursuant to section 10(a) of the Act, as described below.

Following the proposal of the two species as endangered species, certain landowners on North Key Largo expressed an interest in development of a HCP pursuant to section 10(a) of the Act. Under section 10(a), the Service may issue a permit authorizing the taking of listed species as an incident to otherwise lawful activities.

The Service may issue a Section 10(a) incidental take permit provided that, among other things, the permit application is supported by a HCP whose implementation will ensure the long term conservation of the species and the taking of the species will not appreciably reduce the likelihood of the survival and recovery of the species in the wild. Issuance of such a permit is subject to the requirements of section 7(a)(2) of the Act as well as section 102(2)(C) of the National Environmental Policy Act (NEPA), 42 U.S.C. 4332(2)(C). Subsequent to the listing of the Key Largo woodrat and cotton mouse as endangered species, the U.S. Congress allocated \$98,000, to be matched with non-Federal funds, to be used in developing a HCP. The Service, which was charged with administering the Congressional funding, entered into a grant agreement with the Florida

Department of Community Affairs (DCA) under which Monroe County, in cooperation with the DCA, will prepare a HCP for North Key Largo. The HCP will be used to support an application to the Service for a permit to authorize taking endangered species as an incident to development on North Key Largo.

The proposed issuance of the incidental take permit may have significant effects on the quality of the human environment and thus will be the subject of an environmental impact statement (EIS) prepared pursuant to section 102(2)(C) of the NEPA. Scoping meetings, to determine the issues and alternatives to be considered in the EIS, were announced on April 11, 1985 (50 FR 14299), and October 19, 1985 (50 FR 41224); and held on May 16, and October 23, 1985.

A prototype HCP was originally scheduled for completion by September 1985; however, this date has been met, due to the large number of agencies, landowners, and other parties with an interest in the process. It appears now that a draft HCP will not be available before February 1986.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time a species is determined to be endangered or threatened. The Service's criteria for designation of critical habitat (50 CFR Part 424.12; see *Federal Register* of October 1, 1984, 49 FR 38900) specify that critical habitat designation is not prudent when such designation would not be beneficial to the species. It is the Service's decision that critical habitat designation is neither beneficial nor prudent for the Key Largo woodrat and cotton mouse for the following reasons.

Since the February 9, 1984, proposal of these species as endangered, with critical habitat, several changes have occurred. Public land acquisition has proceeded by the U.S. Fish and Wildlife Service (Crocodile Lake National Wildlife Refuge) and Florida's Department of Natural Resources (North Key Largo and New Mahogany Hammock projects). The Federal acquisition will total approximately 7,000 acres, roughly 385 of which are presently habitat for the woodrat and cotton mouse. The State projects include 986 acres, about 300 of which are present woodrat-cotton mouse habitat. Public land acquisitions will therefore

include just over half of the habitat currently known to be occupied by the two species. The remaining woodrat-cotton mouse habitat on North Key Largo is in private ownership, but would be subject to the beneficial conservation provisions of the HCP. The most likely alternatives for development under the HCP would take place without widespread destruction of hardwood hammocks, with development to be clustered, particularly in areas that have already been cleared. Service approval of a section 10(a) permit would require that incidental take not appreciably reduce the likelihood of the survival and recovery of the Key Largo woodrat and cotton mouse. The permitting process itself will be subject to consultation under section 7(a)(2) of the Act, which requires any Federal agency to insure that its actions are not likely to jeopardize the existence of any endangered or threatened species.

A recent study of the Key Largo woodrat and cotton mouse (Goodyear 1985) slightly expanded previously documented range (Barbour and Humphrey, 1982). The study also showed that the cotton mouse was capable of colonizing areas in early successional stages following burns. The woodrat and cotton mouse are still known to occur naturally only on North Key Largo, north of U.S. 1-S905 intersection.

Since the listing of these species, a major Section 7 consultation between the Rural Electrification Administration and the Service has been completed; the lack of critical habitat designation did not affect the resultant biological opinion, which recommended that Federal funding not subsidize electrical delivery to hammock areas supporting the Key Largo woodrat or cotton mouse. It is anticipated that any such future consultations would likewise protect the species and their habitat without the designation of critical habitat. Since critical habitat, by definition, affects only Federal agency activities, it has no application to or regulatory effect on purely private, county, or State actions. Critical habitat designation does not preclude development activities within the designated area, nor does it establish a reserve or indicate an area that is likely to be acquired by the Federal government. Critical habitat serves as an indication to Federal agencies of areas in which their planning may need to consider the needs of endangered or threatened species. If a Federal action outside critical habitat may affect an endangered or threatened species, the action would still be subject to Section 7

consultation; conversely, if a Federal action within critical habitat does not affect a listed species, no consultation is required and the action would not conflict with the Act. Since the areas in which the Key Largo woodrat and cotton mouse occur are well-defined (hardwood hammocks of North Key Largo), and since the areas are currently subject to intensive planning efforts, it is extremely unlikely that any Federal action could be proposed or carried out without coming to the Service's attention. Moreover, the Service believes that the requirements of the Endangered Species Act will ensure that no actions adverse to the species or their habitat will occur.

For all of the above reasons, the Service concludes that designation of critical habitat for the Key Largo woodrat and Key Largo cotton mouse is not prudent. The Service is therefore withdrawing the proposal of February 9, 1984, to designate critical habitat for these species.

References

- Barbour, D.B., and S.R. Humphrey. 1982. Status and habitat of the Key Largo woodrat and cotton mouse (*Noetoma floridana smalli*) and (*Peromyscus gossypinus allapaticola*). J. Mamm. 63:144-148.
- Goodyear, N.C. 1985. Results of a study of Key Largo woodrats and cotton mice: Phase I. Unpublished report to North Key Largo Study Committee, 76 pp.

Author

The primary author of this notice is Dr. Michael Bentzien, U.S. Fish and Wildlife Service, Endangered Species Field Office, 2747 Art Museum Drive, Jacksonville, Florida 32207 (904/791-2580 or FTS 946-2580).

Authority

The authority for this action is the Endangered Species Act (16 U.S.C. 1531 et seq; Pub. L. 93-205, 87 Stat. 884; Pub. L. 94-359, 90 Stat. 911; Pub. L. 95-632, 92 Stat. 3751; Pub. L. 96-159, 93 Stat. 1225; Pub. L. 97-304, 96 Stat. 1411).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Dated: February 9, 1986.

P. Daniel Smith,

Deputy Assistant Secretary for Fish and Wildlife and Parks.

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